

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

(Filed: January 26, 2007)

DO NOT PUBLISH

WILLIAM MCNEAR,)	
father and guardian of his son,)	
WILLIAM HENRY MCNEAR,)	
)	
Petitioner,)	
)	
v.)	No. 98-0521V
)	Stipulation
SECRETARY OF)	
HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	
)	

DECISION DIRECTING ENTRY OF JUDGMENT¹

On January 25, 2007, the parties filed a stipulation. The special master has reviewed thoroughly the stipulation. He adopts completely the stipulation. Therefore, in the absence of a motion for review filed under RCFC Appendix B, the clerk of court shall enter judgment based upon the stipulation in petitioner's favor. Under Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing the right to seek review. Then, under Vaccine Rule 12(a), petitioner may expedite payment by filing an election to accept the judgment.

s/John F. Edwards
John F. Edwards
Special Master

¹ As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, "the entire decision" will be available to the public. *Id.*

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF THE SPECIAL MASTERS

WILLIAM McNEAR, father and guardian of WILLIAM HENRY McNEAR,)	
)	
Petitioner,)	
)	
v.)	
)	
SECRETARY OF HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	
)	

No. 98-521V
Special Master
John F. Edwards

STIPULATION

It is hereby stipulated by and between the parties, the following matters:

1. On June 18, 1998, William McNear (“petitioner”) filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34, *as amended* (the “Vaccine Program”), on behalf of his minor son, William Henry McNear (“Willie”), seeking compensation for injuries allegedly related to Willie’s receipt of diphtheria-pertussis-tetanus (“DPT”) vaccine, Haemophilus influenzae type b (“HIB”) vaccine, and oral polio (“OPV”) vaccines, which are contained in the Vaccine Injury Table (the “Table”), 42 U.S.C. §§ 300aa-14(a)(I),(II),(VI), and (IX); 42 C.F.R. § 100.3(a)(I),(II),(VI), and (IX), as amended.
2. Willie received the above vaccines on June 19, 1995.
3. The vaccines were administered within the United States.
4. Petitioner alleges that Willie sustained the first symptom or manifestation of the onset of an acute and chronic encephalopathy (a Table injury), as defined by, and within the time period set forth in, the Table. Petitioner alleges that Willie suffered global developmental delays and a seizure disorder as sequelae of his Table injury.
5. Petitioner represents that there has been no prior award or settlement of a civil action

for damages against a vaccine manufacturer or administrator on Willie's behalf as a result of his alleged vaccine-related injury.

6. Respondent's Rule 4 Report, filed on September 10, 2004, acknowledged that Willie suffered a Table encephalopathy. With that report, however, respondent filed three medical expert opinions supporting that Willie's condition is due to factors unrelated to receipt of the vaccines; specifically, Willie's pre-existing panhypopituitarism and endocrine dysfunction secondary to his congenital malformation of the brain.

7. Maintaining their above-stated positions, the parties nevertheless now agree that the issues between them shall be settled and that a decision should be entered awarding the compensation described in paragraph 8 of this Stipulation.

8. As soon as practicable after an entry of judgment reflecting a decision consistent with the terms of this Stipulation, and after petitioner has filed an election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), the Secretary of Health and Human Services will issue the following vaccine compensation payments:

- a. A lump sum of \$183,500.00, which amount represents compensation for first year post judgment medical expenses in the form of a check payable to petitioner, as guardian/conservator of the estate of William Henry McNear, for the benefit of William Henry McNear;
- b. An amount sufficient to purchase the annuity contract described in paragraph 10 below, paid to the life insurance company from which the annuity will be purchased (the "Life Insurance Company").

9. The Life Insurance Company must have a minimum of \$250,000,000 capital and surplus, exclusive of any mandatory security valuation reserve. The Life Insurance Company must have one of the following ratings from two of the following rating organizations:

- a. A.M. Best Company: A++, A+, A+g, A+p, A+r, or A+s;
- b. Moody's Investor Service Claims Paying Rating: Aa3, Aa2, Aa1, or Aaa;
- c. Standard and Poor's Corporation Insurer Claims-Paying Ability Rating: AA-, AA, AA+, or AAA;
- d. Fitch Credit Rating Company, Insurance Company Claims Paying Ability Rating: AA-, AA, AA+, or AAA.

10. The Secretary of Health and Human Services agrees to purchase an annuity contract from a Life Insurance Company for the benefit of William Henry McNear, pursuant to which the Life Insurance Company will agree to make payments periodically to petitioner, as guardian/conservator of the estate of William Henry McNear, for the benefit William Henry McNear, for the following items of compensation:

- a. For future un-reimbursable nursing care/home care/residential care expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$132,400.00 to be paid for the remainder of Willie's life, increasing at the rate of 4% compounded annually from the date of judgment.
- b. For future un-reimbursable respiratory therapy expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$51,100.00 to be paid for the remainder of Willie's life, increasing at the rate of 4% compounded annually from the date of judgment.

At the sole discretion of the Secretary of Health and Human Services, the periodic payments may be provided to petitioner in monthly, quarterly, annual or other installments. The "annual amounts" set forth above describe only the total yearly sum to be paid to petitioner and do not require that the payment be made in one annual installment. The petitioner will continue to receive the annuity payments from the Life Insurance Company only so long as Willie is alive at the time that a particular payment is due. Petitioner shall provide written notice to the Secretary of Health and Human Services and to the Life Insurance Company within twenty (20) days of Willie's death.

11. The annuity contract will be owned solely and exclusively by the Secretary of Health and Human Services and will be purchased as soon as practicable following the entry of a judgment in conformity with this Stipulation. The parties stipulate and agree that the Secretary of Health and Human Services and the United States of America are not responsible for the payment of any sums other than the amounts set forth in paragraph 8 herein and the amounts awarded pursuant to paragraph 12 herein and that they do not guarantee or insure any of the future annuity payments. Upon the purchase of the annuity contract, the Secretary of Health and

Human Services and the United States of America are released from any and all obligations with respect to future annuity payments.

12. As soon as practicable after the entry of judgment on entitlement in this case, and after petitioner has filed both a proper and timely election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1) and an application, the special master shall preside over further proceedings to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

13. Payments made pursuant to paragraph 8 and any amounts awarded pursuant to paragraph 12 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(I), subject to the availability of sufficient statutory funds.

14. The parties and their attorneys further agree and stipulate that the monies provided pursuant to this Stipulation, either immediately or as part of the annuity contract, will be used solely for the benefit of William Henry McNear as contemplated by a strict construction of 42 U.S.C. § 300aa-15(a) and (d), and subject to the conditions of 42 U.S.C. § 300aa-15(g) and (h).

15. Petitioner represents that he is, or within 90 days of the date of judgment will become, duly authorized to serve as guardian/conservator of Willie's estate under the laws of the State of New Jersey. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing his appointment as guardian/conservator of Willie's estate. If petitioner is not authorized by a court of competent jurisdiction to serve as guardian/conservator of the estate of William Henry McNear at the time a payment pursuant to this Stipulation is to be made, any such payment shall be paid to the party or parties appointed by a court of competent jurisdiction to serve as guardian/conservator of the estate of William Henry McNear upon submission of written documentation of such appointment to the Secretary.

16. In return for the payments described in paragraphs 8 and 12, petitioner, in his individual capacity and as guardian/conservator of Willie's estate, on behalf of himself, Willie, his heirs, executors, administrators, successors, or assigns, does forever and expressly release,

acquit, and discharge the Secretary of Health and Human Services and the United States of America from any and all actions, causes of action, agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature on account of, or in any way growing out of, any and all known or unknown personal injuries to or death of William Henry McNear resulting from, or alleged to have resulted from, the DPT, HIB, or OPV vaccines administered to Willie on June 19, 1995, as alleged by petitioner in a petition for vaccine compensation filed on or about June 18, 1998, in the United States Court of Federal Claims as petition No. 98-521V.

17. In the event Willie should die prior to receiving any of the payments described in paragraph 8(a), this agreement shall be considered voidable upon proper notice to the Court on behalf of either or both of the parties.

18. In the event the special master fails to issue a decision in complete conformity with the terms of this Stipulation; or, in the event the Court of Federal Claims fails to enter judgment in conformity with a decision that is in complete conformity with the terms of this Stipulation, then the parties' settlement and this Stipulation shall be null and void at the sole discretion of either party.


19. This Stipulation expresses a full and complete settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 12 above. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to.


20. All rights and obligations of petitioner hereunder shall apply equally to his successors and assigns as legal representatives of the estate of William Henry McNear.

END OF STIPULATION

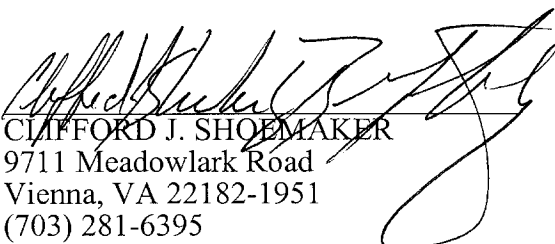
Respectfully submitted,

PETITIONER:

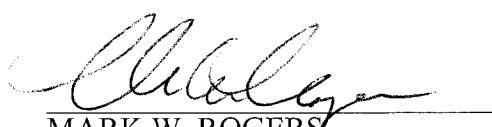

WILLIAM McNEAR *Father and guardian*


KATHLEEN N. REILLY
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 4/3/2011


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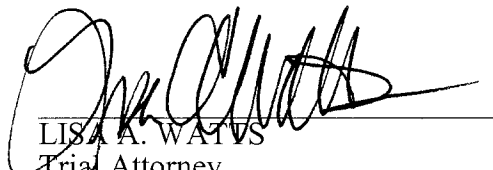
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